

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MARY MCKAIN,

Plaintiff,

vs.

SAFECO INSURANCE COMPANY  
OF AMERICA,

Defendant.

CV 21-100-M-DWM

ORDER

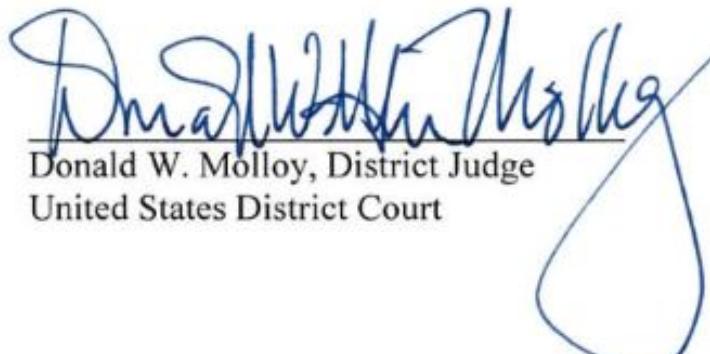
After Defendant Safeco Insurance Company of America removed this action from state court, (Doc. 1), this Court issued an order to show cause why this matter should not be remanded to the state district court for lack of jurisdiction, specifically regarding the amount in controversy. (Doc. 5.) Safeco filed its response, directing the Court to the Ninth Circuit’s decision in *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018). (Doc. 6 at 3.) *Fritsch* held that the amount in controversy requirement includes “all relief to which a plaintiff is entitled if the action succeeds,” *id.*, and in *Chavez v. JPMorgan Chase & Co.*, 88 F.3d 413, 416 (9th Cir. 2018), the Ninth Circuit concluded that attorneys’ fees awarded under fee-shifting statutes may be included in assessing

the amount in controversy so long as the defendant established the amount of such fees by a preponderance of the evidence.

Here, Safeco demonstrated by a preponderance of the evidence that the amount in controversy at issue in this case, including the attorney fees potentially recoverable under the insurance exception to the American Rule, exceeds the jurisdictional threshold. (Doc. 6 at 3–7; Doc. 6-1.) Moreover, Plaintiff McKain has not objected to removal, nor did she respond to Safeco’s response to the order to show cause. Accordingly,

IT IS ORDERED that this matter will be set for a preliminary pretrial scheduling conference by separate order.

DATED this 18th day of October, 2021.

  
Donald W. Molloy, District Judge  
United States District Court